

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

**MIDWEST INDEPENDENT TRANSMISSION
SYSTEM OPERATOR, INC.**

Docket No. **ER02-2458**

**MOTION OF THE MICHIGAN PUBLIC SERVICE COMMISSION TO LODGE
AUGUST 26, 2003 OPINION AND ORDER IN CASE NO. U-13862**

Pursuant to Rule 212, 18 CFR 385.212, of the Federal Energy Regulatory Commission's Rules of Practice and Procedure the Michigan Public Service Commission ("MPSC") respectfully submits its motion to lodge the August 26, 2003 Opinion and Order issued by the MPSC in Case No. U-13862. In support thereof, the MPSC states as follows:

1. Service of all pleadings, documents, and communications in this matter shall be made at both of the following addresses:

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2. On August 12, 2002, the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO" or "MISO") submitted proposed revisions to its OATT Schedules 7, 8, and 9 in order to create a separate pricing zone for Wolverine Power Supply Cooperative, Inc. ("Wolverine").

3. In its October 9, 2002 order in this case, 101 FERC ¶ 61,004, the Federal Energy Regulatory Commission ("Commission") rejected MISO's proposed tariff revisions and established settlement judge procedures. The Commission stated:

. . . We agree with the protesters that Wolverine's transmission facilities must meet the requirements of the seven factor test, as interpreted by the Michigan Commission, in order to ensure that Wolverine receives compensation for its transmission facilities on a basis comparable to the compensation received by Michigan Transco. Application of the seven factor test should form the starting point for these negotiations.

4. Per the seven-factor technical functional/test outlined by FERC in Order 888, the MPSC has adopted transmission and distribution splits for numerous utilities serving Michigan customers, *e.g.* Consumers Energy Company in MPSC Case No. U-11337; Detroit Edison Company in MPSC Case No. U-11283; Alpena Power Company in MPSC Case No. U-11856; Northern States Power Company in MPSC Case No. U-12744; Cloverland Electric Cooperative in MPSC Case No. U-12896; Edison Sault Electric Company in MPSC Case No. U-12690; Wisconsin Public Service Corporation in MPSC Case No. U-12706; and Wisconsin Electric Power Company in MPSC Case No. U-12691. Several of these MPSC decisions have since been filed with and accepted by the Commission.

5. The MPSC filed a Motion to Intervene Out-of-Time in this docket on March 3, 2003. The Motion to Intervene was denied on April 11, 2003.

6. On July 31, 2003, the MPSC filed a Renewed Motion to Intervene Out-of-Time.

7. On August 14, 2003, the Settlement Judge's Report of Contested Offer of Settlement re Midwest Independent Transmission System Operation, Inc. under ER02-2458 was issued.

8. On August 21, 2003, the Order of Chief Judge Terminating Settlement Judge Procedures was issued.

9. On March 17, 2003, Wolverine filed an application with the MPSC (Case No. U-13739) seeking an *ex parte* determination of the proper classification of its transmission and distribution facilities.

10. At paragraph 18 of the application filed with the MPSC, Wolverine stated:

A determination by the MPSC in this case that the proposed classification of facilities is appropriate will provide the Commission with an opportunity to take an active role in that decision, will give assurance to the FERC that the MPSC's perspective has been properly applied, and provide the FERC and Michigan utilities with consistency in the determination of the types of facilities that are determined to serve a transmission function with the State of Michigan.

The MPSC believes the assertion made by Wolverine is correct.

11. On May 22, 2003, Wolverine filed a request with the MPSC to withdraw its application.

12. If, as it appears from a review of the Commission's October 9, 2002 order, and Wolverine's application to the MPSC, the Commission seeks the MPSC's interpretation of the Commission's seven-factor test regarding the split proposed by Wolverine and/or MISO, the MPSC has provided such an interpretation through the MPSC's August 26, 2003 order, after review of the proposed split.

13. Michigan is vitally interested in matters relating to the provision of electric service to businesses and individuals residing within its borders and the costs to be assessed for record transmission and the allocation of those costs. Michigan thus has an interest in seeing that

the record this proceeding includes the MPSC's August 26, 2003 Opinion and Order issued in Case No. U-13862.

WHEREFORE, the MPSC requests that the attached Opinion and Order be lodged in the record in this proceeding.

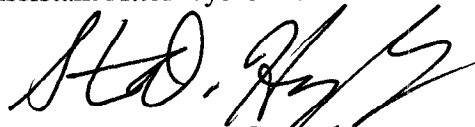
Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

By its counsel:

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A handwritten signature in black ink, appearing to read "S.D. Hughey", is written over the printed name of Steven D. Hughey.

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DATED: August 26, 2003

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
to make an administrative determination regarding)
the proper classification of transmission and)
distribution facilities of **WOLVERINE POWER**)
SUPPLY COOPERATIVE, INC., and to submit)
findings to the Federal Energy Regulatory)
Commission.)
_____)

Case No. U-13862

At the August 26, 2003 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ADMINISTRATIVE DETERMINATION

On March 17, 2003, Wolverine Power Supply Cooperative, Inc., (Wolverine) filed an application in Case No. U-13739 seeking an ex parte determination from the Commission of the appropriate division between the cooperative's transmission and local distribution facilities pursuant to the criteria set forth by the Federal Energy Regulatory Commission (FERC) in its Order No. 888.¹ In a separate order issued today in Case No. U-13739, the Commission has

¹Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed Reg 21,540; FERC Stats & Regs, Regulations Preambles January 1991 to June 1996 ¶ 31,036 (1996). Thereafter, the FERC issued Order No. 888-A, which addressed requests for rehearing of Order No. 888 and reaffirmed the FERC's findings regarding the jurisdictional delineation between transmission and local distribution facilities. 62 Fed Reg 12,274; III FERC Stats and Regs ¶ 31,048, at pp. 30,181-82, 30,335-46 (1997).

dismissed Wolverine's application. However, dismissal of the application filed in Case No. U-13739 does not prevent the Commission from providing guidance to the FERC regarding application of the FERC's "seven factor test" for classifying Wolverine's transmission and distribution assets as contemplated by Order No. 888.

The Commission has a great deal of experience in applying the FERC's seven factor test.² Further, the FERC expressed its interest in having the Commission make such a determination with regard to Wolverine's transmission and distribution facilities when Wolverine previously requested approval from the FERC to join the Midwest Independent Transmission System Operator, Inc. (MISO). In an order issued by the FERC in Docket No. ER02-2458, the FERC stated that in negotiating a settlement, the parties were to use as a starting point that "Wolverine's transmission facilities must meet the requirements of the seven factor test, as interpreted by the Michigan Commission." 101 FERC ¶61,004, p. 21, (emphasis added). Accordingly, given the importance of a proper split of Wolverine's transmission and distribution systems, as well as the FERC's interest in the Commission's input, the Commission finds that it should review its files and records and make an administrative determination on the issue, which then may be submitted to the FERC.

In Order No. 888, the FERC deferred to the states in several areas concerning electric competition, including retail service to ultimate consumers, service reliability, generation and transmission siting, and authority to impose retail stranded cost charges. In the area of separating a utility's transmission and distribution functions, the FERC identified seven considerations that it

²See, the January 14, 1998 order in Case No. U-11283, the March 8, 1999 order in Case No. U-11856, the May 15, 2001 order in Case No. U-12896, the January 14, 1998 order in Case No. U-11337, the December 20, 2000 order in Case No. U-12690, the October 29, 2001 order in Case No. U-12744, the December 20, 2000 order in Case No. U-12706, and the December 20, 2000 order in Case No. U-12691.

found should be determinative of whether a particular power line or facility should be classified as a transmission or a distribution asset. The FERC's seven factors describe general characteristics of distribution systems as opposed to transmission systems. The seven considerations identified by the FERC are as follows:

1. Local distribution facilities are normally in close proximity to retail customers.
2. Local distribution facilities are primarily radial in character.
3. Power flows into local distribution systems; it rarely, if ever, flows out.
4. When power enters a local distribution system, it is not reconsigned or transported on to some other market.
5. Power entering a local distribution system is consumed in a comparatively restricted geographic area.
6. Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.
7. Local distribution systems will be of reduced voltage.

The FERC indicated that it was not precluding consideration of other technical factors that are appropriate in light of historical uses of facilities. Accordingly, application of the FERC's seven factor test to Wolverine's power delivery facilities requires a technical and functional analysis that should involve consideration of the historical and current usage of those facilities.

Information available in the Commission's files and records indicates that Wolverine serves approximately 550 megawatts (MW) of connected load. To do so, it owns and operates approximately 1500 miles of 44 kilovolt (kV) and 69 kV lines as well as over 80 miles of 138 kV lines. However, it is important to note that Wolverine's system is surrounded by and connected to the Michigan Electric Transmission Company, LLC (METC). The METC's electric power delivery facilities were formerly Consumers Energy Company's (Consumers) transmission system. This

situation persuades the Commission that the same technical/functional criteria used to evaluate Consumers' facilities in Case No. U-11283 should be used to classify Wolverine's system.

The FERC's seven factors do not specify a particular voltage level for distribution facilities. Neither do they specify that distribution is only radial in character. Also, the FERC does not specify that power always flows into a distribution system. However, the factors indicate that power that flows into a local distribution system is not reconsigned or transported to some other market, but is consumed in a comparatively restricted geographic area. Further, the FERC factors indicate that distribution systems are of reduced voltage and have meters based at the interface with transmission lines to measure flows into the local distribution system.

With all of these considerations in mind, the Commission notes that the highest voltage facilities in the region are 345 kV. All of the 345 kV facilities in immediate proximity to Wolverine's facilities belong to METC and have been classified as transmission. The Wolverine system is close to retail customers, substantially radial in character, and the power entering its system is consumed in a comparatively restricted geographic area. These characteristics of the Wolverine system resemble a distribution system.

The manner of electrical operation and power flows on Wolverine's system (as contrasted to the METC system) also provide some guidance regarding the proper classification of Wolverine's transmission and distribution facilities. Power flow simulations are tools used by transmission system operators to study system electrical performance. MISO has operational responsibility for regional transmission facilities, including the METC facilities. According to information available in Case No. U-13739, power system operators typically rely on many power transfer simulations between electric systems to establish the electrical transfer capability of various transmission facilities. Consumers asserted in Case No. U-13739 that under such simulations, the Outage

Transfer Distribution Factor (OTDF) and Power Transfer Distribution Factor (PTDF) for all Wolverine facilities below 138 kV are below MISO operating thresholds, which means the Wolverine system is operationally “invisible” to MISO’s operation of the transmission grid.

Further evidence of a lack of Wolverine’s participation in regional power transfers is the fact that neither the East Central Area Reliability Coordination Agreement (ECAR) nor the North American Electric Reliability Council (NERC) have included Wolverine’s 44 kV and 69 kV lines in power flow models prior to 2002. Moreover, it appears that MISO currently does not depict any of Wolverine’s 44 kV or 69 kV lines in its power flow models on the MISO website.

Based on these considerations and consistent with our previous orders applying the seven factor test, the Commission concludes the following with regard to classification of Wolverine’s system.

1. Wolverine’s Airport 138 kV line performs as a transmission facility and should be classified as transmission.
2. The looped 138 kV portions of Wolverine’s Blendon, Bradley, Oden, Sternberg, and Vestaburg substations perform as transmission facilities and should be classified as transmission.
3. Wolverine’s 138 kV radial facilities, 138-69 kV step-down transformers, 69 kV facilities, 69-44 kV step-down transformers, and 44 kV facilities do not perform a transmission function and should be classified as distribution facilities.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission’s Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. Wolverine's Airport 138 kV line performs as a transmission facility and should be classified as transmission.

c. The looped 138 kV portions of Wolverine's Blendon, Bradley, Oden, Sternberg, and Vestaburg substations perform as transmission facilities and should be classified as transmission.

d. Wolverine's 138 kV radial facilities, 138-69 kV step-down transformers, 69 kV facilities, 69-44 kV step-down transformers, and 44 kV facilities do not perform a transmission function and should be classified as distribution facilities.

e. The Commission's findings should be submitted to the FERC for its consideration.

THEREFORE, IT IS ORDERED that the Commission's Acting Executive Secretary is directed to transmit a copy of the Commission's administrative determination in this proceeding to the Federal Energy Regulatory Commission.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of August 26, 2003.

/s/ Robert W. Kehres
Its Acting Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2003, I served copy of the foregoing document by first class United States mail, postage prepaid, to all parties listed on the official service list compiled by the Secretary in this proceeding.

/s/ Steven D. Hughey
Steven D. Hughey

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